

Electric Choice Question 15: *What has Michigan, and what have other jurisdictions, proposed or put in place regarding alternative electric supplier (AES) licensing process or requirements?*

Executive Summary

1. The Michigan Public Service Commission (MPSC) licenses Alternative Electric Suppliers (AESs) under PA 141 and PA 295, which establish minimum requirements for AESs to protect public interests. Other states have also established licensing processes for electric suppliers
2. Public Act 141 defines the term Alternative Electric Supplier as “a person selling electric generation service to retail customers in this state.” The AES is the retail entity that is licensed by the MPSC to make a retail sale of power to the customer. A power marketer is the wholesale entity that is qualified by the Federal Energy Regulatory Commission (FERC) to make market-based rate sales of energy, capacity and ancillary services. The Michigan Public Service Commission licensing procedure requires suppliers to obtain any authorizations required by FERC, including authorization to become registered as a power marketer
3. To be licensed according to PA 141, a prospective AES must be financially capable, possess the technical competence to engage in energy transactions, be capable of meeting safety requirements for electric operations and comply with all other lawful obligations. The supplier must also establish a Michigan presence through the requirement to have a Michigan office
4. The AESs have a significant advantage over regulated utilities. They can choose to serve only the most profitable customers at profitable times, they have no obligation to support customers in need, and their renewable energy requirements are much less stringent

1. PA 141 and PA 295 established minimum licensing requirements for AESs.

Public Act 141 required the Michigan Public Service Commission to establish licensing requirements for Alternative Electric Suppliers in Michigan. PA 141 effectively empowered the Commission, principally through its licensing and enforcement functions, to ensure that suppliers choosing to participate in Michigan retail markets meet certain statutory threshold criteria.

The original Alternative Electric Supplier licensing application form was approved pursuant to an MPSC Order in Case No. U-11915 on June 19, 2000. The licensing form has been revised on several occasions to address legislative changes. On March 2, 2010, the MPSC issued an Order in Case No. U-11915 to address 2008 PA 295's requirements for Alternative Electric Suppliers (AESs) to file renewable energy plans.

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Other states, such as Illinois, have requirements that place greater responsibility for serving customers in an unbiased manner on the AES. Illinois regulations recognize the distinctly different markets for retail access within different customer classes/types. The state has created AES licensing and ongoing operating requirements for those different classes. More information on the Illinois program may be found at: <http://www.icc.illinois.gov/electricity/ares.aspx>.

2. Public Act 141 defines the term Alternative Electric Supplier as “a person selling electric generation service to retail customers in this state.” The AES is the retail entity that is licensed by the MPSC to make a retail sale of power to the customer. A power marketer is the wholesale entity that is qualified by the Federal Energy Regulatory Commission (FERC) to make market-based rate sales of energy, capacity and ancillary services. The Michigan Public Service Commission licensing procedure requires suppliers to obtain any authorizations required by FERC, including authorization to become registered as a power marketer.

To facilitate supplier participation in its retail access program, DTE has separated the role of AES and power marketer and has established a separate qualification process for each, which can be found at www.suppliers.detroitdison.com/internet/howtoqualify/qualify.jsp. In addition to the MPSC licensing requirements, DTE requires both the AES and the marketer to sign agreements with DTE. The power marketer must also be fully certified as a Midwest Independent Transmission System Operator (MISO) market participant. All but one AES performs the role of both AES and power marketer in the DTE program.

In addition to the MPSC licensing requirements, Consumers Energy has its own requirements, which may be found in the retailer handbook at www.consumersenergy.com/electricchoice. Consumers Energy requires all AESs to sign the Consumers Energy Company Electric Customer Choice Distribution Agreement. Unlike DTE, Consumers Energy requires the ECC Retailer to be duly qualified and registered with the Midwest Independent Transmission System Operator (MISO) prior to providing retail access service.

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- 3. To be licensed according to PA 141, a prospective AES must be financially capable, possess the technical competence to engage in energy transactions, be capable of meeting safety requirements for electric operations and comply with all other lawful obligations. The supplier must also establish a Michigan presence through the requirement to have a Michigan office.**

If a supplier cannot meet these minimal requirements, it would not be in the public interest to permit that supplier to solicit and sign contracts with electric consumers in Michigan or otherwise take advantage of the economic opportunities created by retail access.

A licensing procedure change due to PA 295 required an AES to file a renewable energy plan with the MPSC within 90 days of receiving a license. In addition, the Commission issued an Order on December 20, 2012 in MPSC Case No. U-11915 to require AESs to comply with Commission adopted rules governing electric interconnection and net metering rules.

- 4. The AESs have a significant advantage over regulated utilities. They can choose to serve only the most profitable customers at profitable times, they have no obligation to support customers in need, and their renewable energy requirements are much less stringent.**

AESs can cherry pick customers: Alternative Electric Suppliers have no requirements to serve certain classes of customers; they have the opportunity to only serve select customers who the AES wants to target, such as those with the highest load factor. Alternative Electric Suppliers also have the option of returning a customer back to DTE, the provider of last resort, at any time.

No requirement for AESs to support customers in need: Alternative Electric Suppliers have no responsibilities for low income or energy efficiency programs; regulated utilities such as Consumers Energy and DTE are solely responsible for the implementation of both of those programs.

AESs have greater flexibility in renewable program compliance: While Alternative Electric Suppliers have the requirement to file and implement renewable energy plans, AES renewable energy plan compliance can be achieved solely through the acquisition of renewable energy credits (RECs); because AESs do not have a renewable energy capacity requirement, no renewable energy has to be built and/or generated by them or by a third party for sale to them. This creates an uneven playing field in favor of the AES.

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In addition, utilities will be disadvantaged by any change to allow more customers to access deregulated generation markets. Depending on the timing, the change could impact compliance with the 10% renewable energy requirement for the balance of the 20-year renewable plans (2029). The annual renewable energy credit compliance requirements for both DTE and Consumers Energy for the period from 2015 through 2029 will be firmly established based upon full-service sales prior to 2015. Any future reduction in those full-service sales and the associated renewable energy surcharge revenue from those sales could threaten ongoing compliance with the renewable energy standards. On the other hand, AESs can simply exit the business, as they have done in the past when power prices increased, and bypass any ongoing renewable energy commitment for customers that it once served.

Appendix:

#1 Michigan Public Service Commission AES license application

**ALTERNATIVE ELECTRIC SUPPLIER APPLICATION
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION
RETAIL ACCESS PARTICIPATION AGREEMENT**

Michigan law, PA 286 of 2008, Section 10a(1)(a), provides that the Michigan Public Service Commission (Commission) shall issue orders establishing that “no more than 10% of an electric utility’s average weather adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.” On September 29, 2009, the Commission established procedures in Case No. U-15801 for implementation of Section 10a(1)(b)-(d) of Act 286 and opened dockets for all individual electric utilities’ filings. Electric utilities with choice sales during a month shall file this information in their 45-day report and shall post it on their website.

Michigan law, PA 295 of 2008, Section 23, requires that an alternative electric supplier (AES) file a proposed renewable energy plan (REP) with the Commission. On December 4, 2008 the Commission issued an order in Case No. U-15800, which required all AESs to file a REP with an opportunity for public comment on proposed plans. The Commission must approve or reject a filed plan within 90 days. A separate docket will be assigned for this filing after the licensing application is approved by the Commission. Section 173(1) of Act 295 requires the Commission to establish a statewide net metering program, which includes AES participation. In its May 26, 2009 order in Case No. U-15787, the Commission formally adopted administrative rules governing electric interconnection and net metering rules that became effective May 27, 2009. On December 20, 2012 in Case No. U-15919 the Commission adopted the standard net metering application forms for AES category 1 and 2 projects.

Michigan law, PA 141 of 2000, requires that, prior to selling generation service to retail customers in Michigan, an AES must obtain a license from the Commission. A license can be obtained by satisfactory completion of this application form referred to as the Retail Access Participation Agreement. Within 90 days of the approval of an AES license by the Commission, an AES shall file its REP with the Commission.

The Commission’s terms and conditions must be adhered to by the applicant as a condition of maintaining a license. The applicant’s signature on this form attests to the accuracy of the information submitted and commits the applicant to adhere to the terms and conditions as set forth in the Commission’s order in Case No. U-11915.

Failure to provide accurate information on this form, to furnish any required supporting information including required affidavits, or to comply with the terms and conditions, can result in denial or revocation of a license. Upon approval of this application through an order issued by the Commission, the applicant will be licensed as an AES for purposes of selling electric generation services in Michigan.

PART I - FITNESS

1. Name, Michigan office address, and company website:	6. Specify type of provider (utility, marketer, utility affiliate, independent power producer):
2. Contact person or agent, telephone number, and e-mail:	7. Business affiliation (whether utility or other):
3. If principal place of business is outside Michigan, provide name, address, telephone number, and e-mail:	8. FERC authorization type(s) and number(s), if required:
4. Name, telephone number of 24-hour contact person for customers, and e-mail:	9. Broker's name, address, telephone number, and e-mail (if applicable): (list all)
5. Type of legal entity (corporate, partnership, etc.):	10. Please list past or future planned name changes (if applicable):

11. State specifically whether the applicant, an affiliate or subsidiary of the applicant, or a predecessor in interest of the applicant, or an owner, shareholder, principal, officer, executive or director associated with the applicant ever:

- Misled a potential customer and thereby induced that potential customer to sign a contract;
- Defaulted on a contract;
- Did not abide by the terms of the contract;
- Exited the market due to the imposition of any energy related penalties or finings;
- Committed any violations of law or business ethics in connection with the provision of energy or energy-related products and services anywhere in the United States that resulted in a criminal or civil conviction or agreement to pay a penalty including any settlement imposed by a court or administrative agency?

If the answer is yes to any of the above, please explain in detail. Subsequent violations must be disclosed within 30 days to the Michigan Public Service Commission.

12. **Please submit a separate legal affidavit**, signed by a corporate officer with proper authority, which shall attest to the technical ability, knowledge, skill and competency of company and company employees to safely and reliably generate or otherwise obtain and deliver electricity and provide any other proposed services within this state.

PART II – COMPLIANCE COMMITMENT

A supplier must demonstrate that it has the necessary technical and managerial capabilities to ensure adequate service to customers in Michigan. Please provide a complete summary of information covering the applicant's:

1. Certificate for Authority to Transact Business in Michigan (if Foreign Corp, LLC, LPC);
2. Audited financial statements of the applicant for its two most recent fiscal years or other documentation, by affidavit, providing detailed factual data pertaining to applicant's financial standing. Please submit financials under separate cover if considered confidential;
3. Provide the means for the required \$100,000 bond or letter of credit to ensure adequate service to customers in Michigan. Draft language will be provided at a later date;
4. Corporate/Company history with biographies of key personnel;
5. Safety record including any citations resulting from violations of any governmental or electric industry rule or regulation covering the sale of electric generation;
6. Outline of staffing and procedures for service quality and overview of risk management strategy or policy and reliability, including any violations or failures to perform on contracts or other obligations to sell or otherwise provide power.

PART III - COMPLIANCE COMMITMENT

A supplier must meet certain terms and conditions in order to retain its license as an Alternative Electric Supplier including: Financial Capability, Product/Service disclosure, Product/Service labeling and marketing practices, Customer enrollment, Customer confidentiality, Customer data requests, Customer involuntary service termination, Broker relationship, Reciprocity, State fee and revenue collection, Reporting, Customer education, and Service quality.

Suppliers shall be expected to fully comply with the provisions of this agreement as well as 2000 PA 141 and any Commission implementation orders related to this act. Failure to do so may result in revocation of the supplier's license to serve in accordance with the provisions of Section 10(c) of 2000 PA 141, leading to termination of the privilege to provide retail electric service in Michigan.

By signing this form the applicant and its representative: (1) certify that the information provided herein is accurate and complete, and (2) agree to abide by the provisions of this agreement.

Signature: _____ Date: _____

Name: _____ Title: _____

TERMS AND CONDITIONS
ALTERNATIVE ELECTRIC SUPPLIER LICENSING PROGRAM

1. **Supplier information.** Applicant will apprise the Commission Staff (Staff) of any change of its name, Michigan address, telephone number, contact person or agent.
2. **Twenty-four hour contact.** A supplier or agent and telephone number must be made available at all times enabling communication between the customer and supplier. The supplier shall maintain an office within Michigan.
3. **FERC authorization.** Suppliers must obtain any authorizations required by the Federal Energy Regulatory Commission, including authorization to become registered as a Power Marketer, if required by law. A supplier must notify the Staff within 60 days of receiving any such authorization.
4. **Business practices and ethics disclosure.** An AES shall follow all state and federal laws, as well as Commission policies and practices that may be established. Violations of law or business ethics by an AES, AES's agent, affiliate or subsidiary of the applicant, or a predecessor in interest of the applicant, or an owner, shareholder, principal, officer, executive or director associated with the applicant in connection with provision of energy or energy related products or services anywhere in the United States that results in a conviction or acceptance of a penalty for said behavior must be disclosed to the Michigan Public Service Commission within 30 days of any conviction or penalty determined or imposed by a court or an administrative agency.
5. **Product/Service disclosure.** A supplier shall make available, to the extent available and practical, detailed information about the characteristic of the products and services offered, such as the owner, source(s), and fuel type(s) of energy that is in the supplier's portfolio.
6. **Product/Service labeling and marketing practices.** Suppliers must commit to following all state and federal laws, as well as Commission policies and practices that may be established to insure truthful representation of services is practiced in connection with the marketing and sale of electrical products and services in the Michigan retail access program.
7. **Customer enrollment.** Enrollment of customers in the Michigan retail access program must strictly follow the procedures established through the utility plans authorized by the Commission. Slamming (unauthorized switching) and cramming (unauthorized provision of additional service not requested by the customer) constitute serious offenses that may result in revocation of supplier license and/or other penalties.
8. **Customer confidentiality.** All information obtained by the supplier to provide service under this program concerning the customer and the customer's energy characteristics and use patterns is to be held in strict confidence. Such information may only be released to other parties upon supplier receipt of approval by the customer.
9. **Customer data requests.** Customers shall have the right to obtain supplier billing and energy usage data applicable to the customer that is in possession of the supplier.

10. **Customer involuntary service termination.** Involuntary customer service termination must comply with Section 10t of 2000 PA 141.
11. **Broker relationship.** Suppliers relying on the services of brokers must pledge a best faith effort to hold them to compliance with the relevant provisions of this agreement. Suppliers will be expected to identify aggregators they are associated with and shall supply the Staff with the broker's address, telephone number, name of a contact and business affiliation.
12. **State fee and revenue collection.** Suppliers will be required to collect all applicable state fees and charges levied on energy suppliers as a class of business providers, including those fees and charges established by the Commission to implement and enforce this program. Suppliers agree to collect and remit to local units of government all applicable users, sales, and use taxes.
13. **Reporting.**
 - a. AESs shall report aggregated statistical data regarding their retail sales and wholesale transactions on a form provided by the Staff and shall provide access to their books and records so that the Staff can verify the accuracy of the reports. This information should be reported annually on the "Statistical Data Reporting Form".
 - b. AESs shall file an annual report with the Commission summarizing the number and types of complaints received and their resolution. The "Code of Conduct Report Form" is due to the Commission office by April 30 for the preceding year.
 - c. AESs shall file a proposed renewable energy plan with the Commission. A separate docket will be opened preceding a licensing order.
 - d. The "Electric Interconnection and Net Metering Standards", R 460.640, Rule 40, requires an AES to file annual net metering program report in a form to be determined by the Commission, not later than March 31 of each year. Also, a "Net Metering Application Form" is available for alternative electric suppliers to use for their customers who want to participate in a category 1 or 2 net metering projects.
14. **Customer education.** Suppliers will be expected to participate in dissemination of information to the public to promote the retail choice program and otherwise inform the public about important aspects of participation to help customers make better informed decisions. Suppliers will also be expected to cooperate with such other information dissemination as the Commission determines to be in the public interest regarding the safe, reliable, and efficient supply of electricity services to Michigan consumers.

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